IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 327 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL RAMESHBHAI RANCHHODBHAI AND OTHERS

Versus

KARNIK ANANDRAO VINAYAKRAO

Appearance:

1. Civil Revision Application No. 327 of 1990

MR NIKHIL JOSHI for MR AR MAJMUDAR for the Petitioners

MR NA JOSHI for NANAVATI ASSOCIATES for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 20/04/2005

ORAL JUDGEMENT

The petitioners, defendants in Rent Suit

No.653/1977 have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and have challenged the judgment and order dated 13th February, 1990 passed by the learned District Judge, Vadodara in Regular Civil Appeal No.63/1983.

The respondent is the landlord of the suit shop situated at Vadodara. The suit shop was leased to the defendant No.1 for a monthly rent of Rs.30=00. By compromise arrived at in the previous suit being Regular Civil Suit No.1500/1966 the rent was increased to Rs.60=00 per month. Since then, with the consent of the plaintiff the defendant No.1 made additional construction above the existing structure of the suit shop. The rent for the suit shop and the additional room constructed by the defendant No.1 was fixed at Rs.90=00 per month.

The plaintiff instituted the above referred Rent Suit No.653/1977 in the Court of Small Causes, Vadodara for recovery of possession of the suit shop and the arrears of rent on the grounds that the defendant No.1 was the tenant in default and was not ready and willing to pay the rent and that the defendant No.1 had unlawfully sublet the suit shop to the defendants Nos.2 and 3. The learned trial Judge, by judgment and order dated 31st August, 1982, held that the defendant No.1 was in arrears of rent and that he had sublet the suit shop to the defendants Nos.2 and 3. The learned trial Judge was, therefore, pleased to pass decree for eviction and for arrears of rent due. Feeling aggrieved, the defendants preferred Regular Civil Appeal No.63/1983 in the Court of District Judge, Vadodara. The said appeal came to be dismissed by the learned District Judge by judgment and order dated 13th February, 1990. Therefore, the present Revision Application.

Learned advocate Mr.Nikhil Joshi has appeared for the petitioners-defendants. He has submitted that in answer to the suit notice the defendant No.2 had tendered the amount of rent due. However, the plaintiff did not accept the said rent. He has also submitted that the suit shop was taken on rent by the defendant No.1 as the Karta of the Hindu Undivided Family. By deed of partition (Mark-53/11) the properties of the family were partitioned amongst the co-parceners of the HUF. The business in the suit shop was received in partition by the defendant No.2. Hence, the defendant No.2 cannot be said to be the sub-tenant inducted by the defendant No.1. Intimation of the said partition was given to the

plaintiff in the year 1975. The defendant No.3 was the employee in the business and was not a sub-tenant.

The deed of partition (Mark-53/11) is drawn on a plain sheet of paper. Neither the stamp duty is paid nor it is registered. The said deed of partition was not proved before the trial Court and was not received in evidence. Besides, there is no other evidence produced by the defendants to establish that the suit shop was taken on rent for the purpose of business of the HUF. On the contrary, on evidence on record the learned trial Judge has held that the defendant No.1 was tenant in the suit shop in his individual capacity. It has also been held that the defendant No.1 was in arrears of rent since he did not tender the rent on receipt of the suit notice. The defendant No.1 had handed-over the possession of the suit shop to the defendants Nos.2 and 3 to the exclusion of himself. The said finding recorded by the learned trial Judge has been confirmed by the lower appellate Court.

In view of the aforesaid concurrent finding recorded by both the Courts below, no interference is warranted. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

/sakkaf